

Notice of Allowability

Application No.

10/766,041

Examiner

Phillip A. Johnston

Applicant(s)

NAKASUJI ET AL.

Art Unit

2881

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 6-16-2006.
2. ☒ The allowed claim(s) is/are 77-84.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

Detailed Action

1. This Office Action is submitted in response to the Amendment filed 6-16-2006, wherein claims 1-76 have been canceled. Claims 77-84 are pending

Allowable Subject Matter

2. Claims 77-84 are allowed

Examiner's statement of reasons for allowance

The following is an examiner's statement of reasons for allowance:

3. Claim 77 is allowed because prior art fails to show a method of evaluating a sample, using an electron beam apparatus comprising:
preparing a plurality of standard marks having different line and space patterns;
selecting one of standard marks, which has a line and space pattern corresponding to a width of a line on the sample to be evaluated; irradiating the selected standard mark with a plurality of electron beams having different diameters at a plurality of times, respectively; detecting secondary electron beams emitted from the selected standard mark at the respective irradiation times to evaluate S/N ratios; selecting a diameter from the different diameters of the irradiated electron beams with which a maximum

S/N ratio has been obtained in the S/N ratio evaluation; irradiating said sample with a primary electron beams beam having the selected beam diameter; detecting a secondary electron beam generated from the sample by the irradiation; and evaluating the sample, wherein said electron beam apparatus comprises:

- an electron gun having a cathode for forming a primary electron beam;

- a lens positioned near said electron gun;

- a beam separator for separating said secondary electron beam from a primary electron-optical system and directing it to a secondary electron detector; and

- an objective lens for accelerating said secondary electron beam emitted from the sample, wherein said beam separator is positioned above said objective lens so that the secondary electron beam passes through said objective lens and then is deflected and separated from said primary electro-optical system without entering a second lens from the sample surface.

4. Claims 78-84 are allowed by virtue of their dependency upon allowed claim 77.


Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

5. Any inquiry concerning this communication or earlier communications should be directed to Phillip Johnston whose telephone number is (571) 272-2475. The examiner can normally be reached on Monday-Friday from 6:30 am to 3:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiners supervisor John Lee can be reached at (571) 272-2477. The fax phone number for the organization where the application or proceeding is assigned is 571 273 8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PJ
June 27, 2006


NIKITA WELLS
PRIMARY EXAMINER 06/27/06